

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

has further

FILE: B-220910 **DATE:** March 5, 1986
MATTER OF: Cerberonics, Inc.

DIGEST:

1. Where specifications for a brand name or equal battery-operated item require battery chargers "(if applicable)" and salient characteristics list battery chargers, the only reasonable interpretation of the solicitation is that battery chargers are required and are a salient characteristic where the item uses rechargeable batteries. Thus, offered item that used disposable batteries and did not include battery chargers was acceptable.
2. Protest that agency failed to evaluate offers for a battery-operated item on an equal basis--because offers of items with rechargeable batteries had to include battery chargers in their prices while the costs of replacement batteries for items with disposable batteries were not evaluated--lacks merit where the record indicates that the disposable batteries will last for the useful life of the item and the protester has not shown otherwise.
3. Fact that solicitation is unclear regarding the number of battery chargers required with purchased systems does not provide basis for challenging award where the protester admits its price including only one charger still would not be low.
4. Contracting agency properly awarded contract on the basis of initial proposals, without discussions, where the solicitation

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advised offerors of that possibility and award was at the lowest overall cost to the government.

5. In brand name or equal procurements, items offered as equal need not meet generally stated salient characteristics exactly like the brand name item, but the equal items' features must be substantially equivalent in function to the brand name items.

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Cerberonics, Inc. protests the award of a contract to Schwartz Electro-Optics, Inc. under Federal Aviation Administration (FAA) request for proposals (RFP) No. DTFA-02-85-R-00114. The RFP sought fixed-price offers for each of two different quantities of "Cerberonics Salted" or equal man-to-man combat training systems, which basically include a revolver modified to transmit laser impulses and garments (vests and caps) equipped with sensors to record lethal hits. The protester complains that the solicitation was unclear regarding the need to provide battery chargers, that the contracting officer orally advised Cerberonics to provide such chargers, and that Schwartz was the low offeror based on providing disposable batteries without battery chargers. Cerberonics also protests FAA's failure to conduct negotiations.

We deny the protest.

Item 1 of the RFP's schedule of supplies and services was for five systems consisting of one revolver, one set of garments, one battery charger "(if applicable)," and two ancillary pieces of equipment.^{1/} Item 2 was for seven systems without the ancillary equipment and did not mention battery chargers. The salient characteristics that a system offered as equal to the brand name system had to meet included battery chargers.

Prior to the deadline for the receipt of initial proposals, Cerberonics called the agency and pointed out an inconsistency in the fact that item 1 required one battery

^{1/} The two pieces were an "aim-point feed back evaluator target" that indicated bull's-eye hits, or the direction of any misses, and a bomb simulator target.

charger (if applicable), whereas item 2 made no mention of any requirement for battery chargers. Cerberonics further pointed out that the salient characteristics included battery chargers without the statement "(if applicable)." According to Cerberonics, the contracting officer told Cerberonics that the battery charger requirement would be added to item 2 and that Cerberonics should submit a proposal on that basis. There was no discussion regarding the number of chargers required.

Only Cerberonics and Schwartz submitted proposals. Ceberonics offered a total of six battery chargers for both items since its system's batteries required recharging, whereas Schwartz offered disposable batteries except for a rechargeable battery for one piece of the ancillary equipment. Schwartz' total price was \$45,235, and Cerberonics' was \$485 higher at \$45,720. The agency awarded Schwartz the contract without conducting discussions, as permitted by the RFP, since Schwartz' price was low and the agency had no reason to believe that discussions would result in a more advantageous price.

Cerberonics first argues that the offer of a system lacking rechargeable batteries and a battery charger failed to meet the salient characteristics. Cerberonics complains that, in any case, the agency failed to evaluate offers on a common basis since Cerberonics was required to offer battery chargers while Schwartz was not.

The agency's position is that the only reasonable interpretation of the RFP was that the requirement for battery chargers only applied to proposed systems utilizing rechargeable batteries, whereas Schwartz offered disposable batteries with extended useful lives. In this respect, the agency contends that in the discussion with the contracting officer to which Cerberonics refers, the firm actually was told that battery chargers were required only if the offered system's batteries were rechargeable. The agency maintains that while Schwartz' and Cerberonics' offered systems were dissimilar, the evaluation was on a common basis since both systems were evaluated for the cost and capability of meeting the agency's needs.

Solicitations should be read as a whole and, wherever reasonably possible, effect must be given to each word or clause. Aerodyne Systems Engineering Ltd., B-216381, June 6, 1985, 85-1 CPD ¶ 646. The FAA's interpretation of the RFP as requiring battery chargers only where the offered system contained rechargeable batteries complies with this rule. The requirement for battery chargers "(if applicable)" appeared in item 1 and in the RFP's section

detailing the specifications for both items. Notwithstanding that the salient characteristics listed battery chargers without any exception, the FAA's interpretation is the only way to give effect to the phrase "if applicable" in both item 1 and the specifications. Thus, Schwartz's offer of a system that uses disposable batteries and lacks battery chargers was permissible under the RFP. In this connection, we see nothing improper in the contracting officer's telling Cerberonics that the firm had to offer battery chargers, since the firm's system in fact required them in order to function for the necessary time period.

The protester suggests that competition on an equal basis required the FAA to evaluate the price of replacement batteries for Schwartz's system, since Cerberonics included battery chargers in its offered price. The record, however, does not indicate that Schwartz's batteries will require replacement during the useful life of the systems. The agency states that Schwartz's batteries are extremely long lived, and Schwartz asserts that its batteries can provide up to one million rounds under laboratory conditions and have been used in the field for more than three years without replacement. The protester has not furnished any evidence to dispute those positions; under the circumstances, it would have made no sense for the FAA to evaluate Schwartz's offer on the basis Cerberonics suggests.

We do believe that the RFP was open to question regarding the number of battery chargers required for systems using rechargeable batteries since item 1 failed to specify a number of chargers and item 2 failed to specify chargers at all. Although this could have had an impact on price, we do not believe that Cerberonics was prejudiced in this regard since, according to Cerberonics' own calculations, it attributed only \$484.98 of its offered price to the six battery chargers (that is, approximately \$80 each) whereas the price difference between Schwartz's and Cerberonics' offers was \$485. Even if Cerberonics had offered only one battery charger, its offer still would have been approximately \$80 more costly than Schwartz's offer.

Cerberonics also argues that the agency should have negotiated with it and Schwartz due to the small (\$485) difference between their prices.

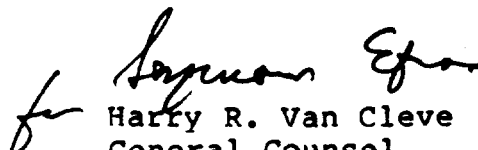
Under the Competition in Contracting Act of 1984, a contracting agency may make an award on the basis of initial proposals where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal

will result in the lowest overall cost to the government. 41 U.S.C.A. §§ 303A(b)(2)(B)(i) and § 303B(d)(1)(B) (West Supp. 1985). The RFP here incorporated by reference the "Contract Awards" clause, Federal Acquisition Regulation, § 52.215-16 (1984). Section (c) of this provision expressly advised offerors that the government might award a contract "on the basis of initial offers received, without discussions," and that offerors thus should include their best terms in their initial proposals. Accordingly, there was nothing improper in the FAA's accepting the lowest cost initial offer, without conducting discussions.

Lastly, Cerberonics complained in its comments on the agency report that Schwartz did not offer an "equal" system. Cerberonics notes that the salient characteristics listed a weapon disable feature. The protester asserts that there is a significant difference between Schwartz's disable feature and the brand name system's disable feature, in that the brand name's disable feature is automatic whereas Schwartz's requires activation by a key. The protester also alleges that Schwartz's offered garments do not fit as well and, thus, are not as functional as Cerberonics'.

Where the salient characteristics state features in general terms, as here, as opposed to providing precise design or functional requirements, items offered as equal need not meet the characteristics exactly like the brand name item; the equal item's characteristics need only be substantially equivalent in function to the brand name item's. See Cohu, Inc., B-199551, Mar. 18, 1981, 81-1 CPD ¶ 207. Since Cerberonics does not dispute that Schwartz's proposal offered a functional disable feature as required by the salient characteristics, there is no merit to its protest that the disable feature must also be automatic. Regarding the fit of the garments, Cerberonics has presented no evidence to substantiate its allegation that Schwartz's offered vests and caps do not function substantially equivalently to Cerberonics'.

The protest is denied.


Harry R. Van Cleve
General Counsel